

Amendment No. 4 to HB1993

Coleman  
Signature of Sponsor

AMEND Senate Bill No. 2001\*

House Bill No. 1993

FILED

Date \_\_\_\_\_

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Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

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by deleting all the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following new, appropriately designated sections:

Section 29-26-121.

(a) Any person, or that person's authorized agent, asserting a potential claim for medical malpractice shall give written notice of such potential claim to each health care provider against whom such potential claim is being made at least sixty (60) days before the filing of a complaint based upon medical malpractice in any court of this state.

Attached to such written notice shall be a list of all health care providers to whom notice is being given pursuant to this section. For purposes of this section, notice shall include actual written notice provided to the health care provider or such provider's authorized agent; or notice by registered mail, return receipt requested, to the health care provider or such provider's authorized agent; or notice by overnight delivery using a nationally recognized carrier.

(b) If a complaint is filed in any court alleging a claim for medical malpractice, the pleadings shall state whether each party has complied with the provisions of § 29-26-121(a) and shall provide such evidence thereof as the court may require to determine if the provisions of this section have been met. The court has discretion to excuse compliance with this section only for extraordinary cause shown.

(c) If notice is given as provided in this section, the applicable statutes of limitations and repose shall be extended up to a period of ninety (90) days, and this

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extension shall apply to all parties and potential parties. In no event shall this section operate to shorten the statutes of limitations or repose applicable to any action asserting a claim for medical malpractice. Once a complaint is filed alleging a claim for medical malpractice, the notice provisions of this section shall not apply to any person or entity who is made a party to the action thereafter by amendment to the pleadings as a result of a defendant's alleging comparative fault.

(d) All parties in an action covered by this section shall be entitled to obtain complete copies of the claimant's medical records from any other party. A party shall provide a complete copy of the claimant's medical records as of the date of the receipt of a written request for such records within thirty (30) days thereafter. However, the receipt of a medical authorization executed by the claimant shall be considered compliance by the claimant with this section.

Section 29-26-122.

(a) Within ninety (90) days after filing a complaint in any medical malpractice action in which expert testimony is required by § 29-26-115, the plaintiff or plaintiff's counsel shall file a Certificate of Good Faith stating that:

(1) The plaintiff or plaintiff's counsel has consulted with one (1) or more experts who have provided a signed written statement confirming that upon information and belief they:

(A) Are competent under § 29-26-115 to express opinion(s) in the case; and

(B) Believe, based on the information available from the medical records concerning the care and treatment of the plaintiff for the incident(s) at issue, that there is a good faith basis to maintain the action consistent with the requirements of § 29-26-115; or

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(2) The plaintiff or plaintiff's counsel has consulted with one (1) or more experts who have provided a signed written statement confirming that upon information and belief they:

(A) Are competent under § 29-26-115 to express opinion(s) in the case; and

(B) Believe, based on the information available from the medical records reviewed concerning the care and treatment of the plaintiff for the incident(s) at issue and, as appropriate, information from the plaintiff or others with knowledge of the incident(s) at issue, that there are facts material to the resolution of the case that cannot be reasonably ascertained from the medical records or information reasonably available to the plaintiff or plaintiffs counsel; and that despite the absence of this information there is a good faith basis for maintaining the action as to each defendant consistent with the requirements of § 29-26-115. Refusal of the defendant to release the medical records in a timely fashion or where it is impossible for the plaintiff to obtain the medical records shall waive the requirement that the expert review the medical record prior to expert certification.

(b) Within thirty (30) days after a defendant has alleged in an answer or amended answer that a non-party is at fault for the injuries or death of the plaintiff and expert testimony is required to prove such fault as required by § 29-26-115, each defendant or defendant's counsel shall file a Certificate of Good Faith stating that:

(1) The defendant or defendant's counsel has consulted with one (1) or more experts, which may include the defendant filing the Certificate of Good Faith, who have provided a signed written statement confirming that upon information and belief they:

(A) Are competent under § 29-26-115 to express opinion(s) in the case; and

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(B) Believe, based on the information reviewed concerning the care and treatment of the plaintiff for the incident(s) at issue, that there is a good faith basis to allege such fault against another consistent with the requirements of § 29-26-115; or

(2) The defendant or defendant's counsel has consulted with one or more medical experts, which may include the defendant filing the Certificate of Good Faith, who have provided a signed written statement confirming that upon information and belief they:

(A) Are competent under § 29-26-115 to express opinions(s) in the case; and

(B) Believe, based on the information reviewed concerning the care and treatment of the plaintiff for the incident(s) at issue, that there are facts material to the resolution of the case that cannot be reasonably ascertained from the information reasonably available to the defendant or defendant's counsel; and that despite the absence of this information there is a good faith basis for alleging such fault against another, whether already a party to the action or not, consistent with the requirements of § 29-26-115.

(c) The failure of a plaintiff to file a Certificate of Good Faith in compliance with this section shall, upon motion, make the action subject to dismissal with prejudice. The failure of a defendant to file a Certificate of Good Faith in compliance with this section alleging the fault of a non-party shall, upon motion, make such allegations subject to being stricken with prejudice unless the plaintiff consents to waive compliance with this section. If such allegations are stricken, no defendant, except for a defendant who complied with the provisions of this section, can assert, and neither shall the judge nor jury consider, the fault, if any, of those identified by such allegations. The court may, upon motion, grant an extension within which to file a Certificate of Good Faith if the

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court determines that a health care provider who has medical records relevant to the issues in the case has failed to timely produce medical records upon timely request, or for other good cause shown.

(d)

(1) Subject only to the provisions of subsection (d)(2) of this section, the written statement of an expert relied upon in executing the Certificate of Good Faith is not discoverable in the course of litigation.

(2) If a party in a medical malpractice action subject to this section prevails on the basis of the failure of an opposing party to offer any competent expert testimony as required by § 29-26-115, the court may, upon motion, compel the opposing party or party's counsel to provide to the court a copy of each such expert's signed written statement relied upon in executing the Certificate of Good Faith. Such medical experts may be compelled to provide testimony under oath, as determined by the court, for the purposes of determining that party's compliance with § 29-26-122(a) or (b).

(3) If the court, after hearing, determines that this section has been violated, the court shall award appropriate sanctions against the attorney if the attorney was a signatory to the action and against the party if the party was proceeding pro se. The sanctions may include, but are not limited to, payment of some or all of the attorney's fees and costs incurred by a party in defending or responding to a claim or defense supported by the non-complying Certificate of Good Faith. If the signatory was an attorney, the court shall forward the order to the Tennessee board of professional responsibility for appropriate action. Upon proof that a party or party's counsel has filed a Certificate of Good Faith in violation of this section in three (3) or more cases in any court of record in Tennessee, the court shall, upon motion, require the party or party's counsel to post a bond in the amount of ten thousand dollars (\$10,000) per adverse party in any future medical malpractice case to secure payment of sanctions for any violation of this section in such case.

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(4) A Certificate of Good Faith shall disclose the number of prior violations of this section by the executing party.

(5) The administrative office of the courts shall develop a form Certificate of Good Faith to effectuate the purposes of this section.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. For purposes of the administrative office of the courts developing a form Certificate of Good Faith, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect October 1, 2008, and shall apply to all actions filed on or after that date, the public welfare requiring it.

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